

REMARKS

This application is amended in a manner to place it in condition for allowance at the time of the next Official Action.

Claims 27 and 44 are amended. Support for the amended claims may be found, for example, in the third paragraph on page 19, and as exemplified in Examples 1 and 4, where the phases are combined and mixed at ambient to form liquid emulsions.

Claims 27-40, 42, and 44 remain pending in the application.

Claims 27-40, 42 and 44 stand rejected under 35 USC §102(b) as being anticipated by LAHANAS et al. U.S. 5,304,334 (LAHANAS). This rejection is respectfully traversed.

The position maintained by the Official Action is that the fatty phase of LAHANAS, which comprises oil and perfluoropolyether, added to the water-in-silicon emulsion of LAHANAS, which comprises a gelled aqueous phase, meets the requirements of the claims. The reason given in the Official Action is that the claimed invention recites a method "comprising" a number of steps, which does not exclude steps where one removes components from the multiphase composition of LAHANAS to arrive at the final product.

However, LAHANAS fails to disclose or suggest such removal steps after the final multiphase emulsion is made.

Moreover, the currently amended independent claims 27 and 44 recite that the step of forming the water-in-oil emulsion

"consisting of" the fatty external phase and the gelled internal phase. Accordingly, the emulsion forming step excludes the presence of phases other than the fatty external phase and the gelled internal phase, and the claims exclude the complex multiphase composition of LAHANAS.

Furthermore, LAHANAS teaches method of preparing and stabilizing complex multiphase compositions. Such methods to prepare "a stable multiphase composition", as described in LAHANAS (Column 5, Line 59 to Column 6, Line 13) comprise the following steps:

- (i) mixing an aqueous solution of water-soluble polymeric emulsifier, a silicon-based emulsifier and an oleophobic, hydrophobic silicon fluid in amounts effective to form a stable water-in-silicon,
- (ii) mixing the water-in-silicon emulsion obtained in step (i) with a hydrophilic gel comprising water and a water-soluble polymer enhancing viscosity, in order to obtain a stable dispersion, and
- (iii) adding to the dispersion obtained in step (ii) an oil liquid crystal and a perfluoropolyether in order to form a stable multiphase composition comprising a continuous phase of silicon fluid and independent dispersed phases of water, gel, oil or liquid crystal, and perfluoropolyether.

Thus, LAHANAS does not teach, contrary to the position of the OFFICIAL ACTION, the addition of a fatty phase, "comprising the oil and the perfluoropolyether, to the water-in-silicon emulsion, comprising the gelled aqueous phase". LAHANAS teaches the addition in step iii) of a mixture consisting in an oil, or a thermotropic liquid crystal, and a perfluoropolyether to a dispersion (Column 6, Line 8), formed in step (ii), which consists in an external silicon phase and independent phases of a hydrophilic gel and a water- soluble polymeric emulsifier.

As the presence of perfluoropolyether is compulsory in the method disclosed and claimed by LAHANAS, and as the amended independent claims 27 and 44 of the present application exclude any additional steps from the claimed process, LAHANAS can neither anticipate, nor render obvious, claims 27 and 44.

Therefore, withdrawal of the rejection of claims 27 and 44, and dependent claims 28-40 and 42, is respectfully requested.

Claims 27-40, 42 and 44 stand rejected under 35 USC §102(b) as being anticipated by KELLNER et al. U.S. 6,042,815 (KELLNER). This rejection is respectfully traversed.

The position of the Official Action is that regardless of the fact that KELLNER only discloses specific method steps for forming an oil-in-water emulsion, KELLNER discloses a method for forming a water-in-oil emulsion. Additionally, the Official Action maintains that the claims are directed to a method, not a

composition comprising a fatty external phase and a gelled aqueous internal phase.

However, the purpose of KELLNER is to "formulate solid cosmetic compositions which provide a cooling feel to the skin, a smooth texture finish when applied to the skin" (Column 1, Lines 36-38 of) and to "formulate stable solid or stick cosmetic compositions which are capable of moisturizing the skin" (Column 1, Lines 39-41).

KELLNER defines the term "solid" as meaning "that the cosmetic sticks compositions are solid or semi-solid at room temperature, i.e., 25°C (Column 2, Lines 7-9).

KELLNER defines "stick" cosmetic compositions as "having a consistency such that they can be molded into the form of a stick- for instance, by being heated until molten and then poured into a mold and cooled" (Column 2, Lines 10-14).

KELLNER discloses that such stable, pigmented cosmetic sticks are "in the emulsion form, i.e. water-in-oil or oil-in-water" (Column 1, Lines 45-47), but KELLNER fails to disclose any generic process or method of preparing such solid or stick cosmetic compositions. Indeed, the examples (Column 22 Line 7 to Column 23 Line 44) only teach a specific process for the preparation of solid oil-in-water composition which consists in:

- (i) preparing a phase (A) comprising solid ingredients,

- (ii) adding a fatty phase to phase (A) and heating such a mixture (B) at 85-87°C,
- (iii) heating water in a separate ingredient at 90°C, and doing at a temperature from 85°C to 90°C hydrosoluble ingredients in order to prepare a homogeneous water phase (C), and
- (iv) adding a hydrophobic phase (B) to water phase (C) maintaining the temperature at 83°C to 85°C,
- (v) mixing additional ingredients (preservatives) with the composition obtained in step (iv) at said temperature, and
- (vi) pouring the composition into stick molds.

Thus, KELLNER does not expressly teach or anticipate a process for the preparation of a water-in-oil emulsion in a liquid form at ambient temperature as recited in currently amended independent claims 27 and 44 of the present application.

Neither would KELLNER render obvious the claimed invention. The teachings of KELLNER only relate to forming solid compositions at ambient temperature, whether in the form of an oil-in-water emulsion (Examples 1 and 2) or a water-in-oil water emulsion, and, thus, fail to suggest a liquid form.

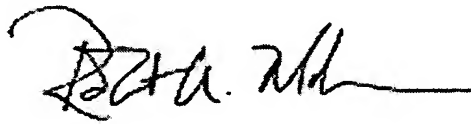
Therefore, withdrawal of the rejection of claims 27 and 44, as well as dependent claims 27-40 and 42, is respectfully requested.

In view of the present amendment to the claims and the foregoing remarks, the present application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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